IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 72 OF 2004
IN
LETTERS PATENT APPEAL NO.155 OF 2006
IN
WRIT PETITION NO.3858 OF 2001

Janta Shikshan Sansthan, Daund..Applicant

Vs.

The State of Maharashtra
& Ors. ..Respondents

Mr.A.M.Joshi counsel for applicant
Mr.R.M.Patne AGP for respondent-State
Mr.Chandrakant Bidkar counsel for respondent no.4

CORAM: S.B.MHASE &
SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 09, 2007

P.C.

1. Heard Mr.A.M.Joshi, the learned counsel for the applicant and Mr.Bidkar, the learned counsel for the respondent no.4.

2. This is a civil application to grant stay as against the orders passed in Appeal No.56 of 1998 from which the aforesaid Letters Patent Appeal has arisen. Respondent no.4 was appointed in the year 1996-97 and 1997-98 as a teacher on temporary basis

and in that capacity he was also holding the charge of Head Master. He was removed from service by the applicant by order dated 30.3.1998. Challenging the said termination order, the respondent no.4 approached the School Tribunal and the School Tribunal inturn, by order dated 18.9.2000 allowed the appeal and directed reinstatement of the respondent no.4 in Appeal No.56 of 1998. The said order of the School Tribunal was challenged by the applicant by filing Writ Petition No.3858 of 2001. However, the said Writ Petition was rejected at the admission stage by the learned Single Judge of this Court on 9.9.2002. Being aggrieved and dissatisfied with the said order, the present Letters Patent Appeal has been filed.

3. The Letters Patent Appeal has already been admitted by this Court on 13.11.2006 and therefore, the present civil application is made for stay of the orders passed by the School Tribunal. This Court by order dated 13.11.2006 has granted ad-interim stay initially for a period of three weeks and by order dated 5.12.2006, the stay was continued.

4. Today, we heard both the sides on merit. Mr.Joshi, the learned counsel for the applicant submitted that the appointment of the respondent no.4 was temporary and as during the said period, his work was not satisfactory, he has been removed from service. In order to demonstrate how the work was not satisfactory, in reply affidavit which was filed before the School Tribunal, the conduct which was observed by the Management was explained. However, Mr.Joshi, the learned counsel for the applicant submitted that the affidavit has been misread by the Single Judge to hold the termination order as a stigmatized order and thereby rejected the Writ Petition. Mr.Joshi relied upon decision reported in **(2002) 10 Supreme Court Cases 394 in the matter of Shailaja Shivajirao Patil Vs. President, Hon'ble Khasdar UGS Sanstha and others**, and submitted that the observations show that the assessment of the work of a temporary employee or probationer employee is not a stigmatized and therefore, he submitted that the reasoning and approach adopted by the learned Single Judge is erroneous one and prayed for continuation of the stay till the final disposal of the Letters Patent Appeal.

5. Mr.Bidkar, the learned counsel for the respondent no.4 submitted that as the result of the respondent no.4 being in service with the applicant, respondent no.4 has obtained a status of a permanent employee and the permanent employee cannot be removed unless a proper inquiry as contemplated under Rule 37 is completed and he submitted that it is a camouflage action on the part of the applicant. He insisted that the appointment of respondent no.4 is a probationary appointment and as the probation period has been completed, he became permanent employee and in the absence of inquiry, he cannot be removed. He vehemently submitted that order of termination is a stigmatization without following due process of law and therefore, ad-interim order which has been granted by this Court, may be vacated and civil application may be rejected.

6. We have perused the appointment order. From the appointment order, it is clear that the appointment of the respondent no.4 was a temporary one and there was no appointment on probationary basis. Apart from that, there are two orders issued on year to year basis which also show that the appointment was

not a probationary, because, probationary order as contemplated under Maharashtra Employees of Private School Rules is expected to be of two years. Since we find that such orders were not issued to respondent no.4, we find the prima facie force in the contention of the learned counsel Mr.Joshi that the appointment was a temporary one. It has been observed by the Management that while acting as a Head Master, an improper or incorrect certificate was given in favour of the one of the candidates so as to get admission for D.Ed. examination when that candidate was not in actual service with the present Management. Let the facts as it is. A probationary or temporary employee prima facie, should not have issued such a certificate in favour of a person who is not in the service. Prima facie, it is a false preparation of record. Not only that, that person is likely to claim a right of service as against the present Management and the cognizance of this conduct, has been taken. We find prima facie substance at this stage to rely upon the above referred Supreme Court judgment that such conduct may not amount to stigmatization. However, enquiry into that aspect will have to be done at the final hearing. We find at this stage that the said issue

is required to be gone into and requires consideration from this Court and therefore, we find a prima facie substance and force in the submissions made by Mr.Joshi and therefore, we accept the contention made by Mr.Joshi and reject the contention made by Mr.Bidkar, the learned counsel for the respondent no.4.

7. In the result, the civil application is allowed. Ad-interim orders dated 13.11.2006 and 5.12.2006 are made absolute till the final disposal of the appeal.

[SMT.V.K.TAHILRAMANI, J.] [S.B.MHASE, J.]